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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

M. W.,

Petitioner,

v.

THE SUPERIOR COURT OF THE  
COUNTY OF SAN BERNARDINO,

Respondent;

SAN BERNARDINO COUNTY  
DEPARTMENT OF CHILDREN'S  
SERVICES,

Real Party in Interest.

E036981

(Super.Ct.No. J-185544)

OPINION

ORIGINAL PROCEEDING; petition for extraordinary writ. Raymond L. Haight,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Timothy L. Guhin for Petitioner.

No appearance for Respondent.

Ronald D. Reitz, County Counsel, and Danielle E. Wushenich, Deputy County Counsel, for Real Party in Interest.

Under California Rules of Court, rule 39.1B, petitioner M. W. seeks review of the juvenile court's order setting a hearing pursuant to Welfare and Institutions Code section 366.26,<sup>1</sup> to establish a permanent plan for the minor Makayla W. Petitioner contends that the court abused its discretion when it denied her request to continue the section 366.22 hearing.

We deny the petition on its merits.

#### PROCEDURAL AND FACTUAL HISTORY

Because petitioner does not raise any issue pertaining to the merits of the court's order setting the section 366.26 hearing, we summarize the underlying facts briefly.

Petitioner's daughter, Makayla W., was taken into custody by the Department of Children's Services (DCS or the Department) on November 27, 2002, on the basis of a complaint by the alleged father that petitioner had abandoned the baby for a period of several hours without providing for her care. Makayla was eight months old at the time. Petitioner's three older children had previously been removed from her custody and were eventually freed for adoption. Petitioner was only 14 when her first child was born, and was 18 when Makayla was born.

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<sup>1</sup>All subsequent statutory references are to the Welfare and Institutions Code unless otherwise specified.

A petition pursuant to section 300 alleging failure to protect and failure to support was filed and sustained. (§ 300, subds. (b), (g).) Family maintenance services were ordered for petitioner and for the alleged father. Services were later terminated as to the alleged father when it was determined that he was not Makayla's biological father.

Makayla was initially placed in petitioner's custody. However, petitioner failed to maintain a stable and appropriate residence and made only minimal progress toward completion of her service plan. She did not complete a parenting class and moved several times, often without providing DCS with her address or other contact information. She left Makayla in the care of people not approved by DCS and allowed people not approved by DCS to live in her home. The court removed Makayla from petitioner's custody and ordered visitation and reunification services.

At the time of the 12-month review hearing, petitioner had begun to make significant progress. She was employed and had created more stable living arrangements in Los Angeles County, where she had relatives with whom she could reside. She visited Makayla faithfully, despite the hardship involved in traveling by bus from Los Angeles County to Rancho Cucamonga for her visits. She was attending therapy and parenting classes. She had received a very positive psychological evaluation. DCS and the court concurred that she should be given an additional six months in which to complete her parenting class and stabilize her life to the point where she could appropriately care for Makayla.

Unfortunately, petitioner did not complete the parenting class and continued to exhibit instability, in the perception of the social worker. At the beginning of the final

six-month reunification period, she had been living with her aunt. She moved to her grandfather's home, then briefly moved into an apartment, then returned to her grandfather's home, where she lived with her grandfather and uncle. A Los Angeles County social worker who was responsible for a dependency case involving the children of petitioner's fiancé had reported that the fiancé was living at petitioner's grandfather's residence in a converted garage. Petitioner testified that the garage was not a residence and that neither she nor her fiancé lived in the garage. She testified that her fiancé worked for her grandfather, who operated a business out of his residence and used the garage in connection with the business.

Petitioner testified that she moved to her grandfather's house because it afforded her a bedroom adequate for herself and her daughter. At her aunt's house, she had slept on the floor in the living room, and her aunt would not permit her to bring in a bed for Makayla. The social worker gave no explanation for her failure to have visited the home in the six months petitioner had been living there, or to have arranged for the necessary screening of petitioner's relatives.

The court found that petitioner had not demonstrated sufficient stability and that returning Makayla to her care would be detrimental to the child. The court set a section 366.26 hearing on a proposed permanent plan of adoption. Petitioner filed timely notice of intent to file a writ petition and timely filed her petition.

## DISCUSSION

### The Court Did Not Abuse Its Discretion in Denying Petitioner's Request to Continue the Section 366.22 Hearing.

Petitioner contends that the court abused its discretion when it denied her request to continue the section 366.22 hearing on the ground that her attorney had not had adequate time to review petitioner's documentation, which would have supported her contentions that she had stabilized her life to the point of being able to care adequately for Makayla and that she had substantially completed the other requirements of her case plan.

At the beginning of the section 366.22 hearing, petitioner's attorney told the court he was not prepared to proceed because petitioner had just given him a packet of documents which were necessary to support her position. He gave the following explanation for her failure to have provided the documents sooner: The hearing had originally been set for October 12, 2004. Petitioner was present in court on April 12, 2004, when the court set the date for the section 366.22 hearing. However, she somehow forgot that the hearing was set for October 12 and mistakenly believed it was set for October 27. Accordingly, she did not appear on October 12 or on October 22 for the scheduled settlement conference. She did not receive written notice of the hearing or the social worker's report before the hearing date because the report was erroneously mailed to her aunt's address, even though she had given her new address to the social worker in May. When petitioner appeared in court on October 27, she was informed that the

hearing had been set for October 12 but was reset to November 3 as a contested hearing. She had faxed at least some of her documentation to the social worker.

The court concluded that petitioner had failed to show good cause for a continuance and denied the request.

A juvenile court may continue a dependency hearing at the request of a parent for good cause and only for the time shown to be necessary. (§ 352, subd. (a).) Courts have interpreted this policy to be an express discouragement of continuances. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 179-180.) Denial of a continuance will not be overturned on appeal absent an abuse of discretion. Discretion is abused only when a decision is arbitrary, capricious or patently absurd and results in a manifest miscarriage of justice. (*Id.* at p. 180.)

Here, we find no abuse of discretion. Petitioner and her attorney offered no explanation for her failure to deliver the documents to her attorney prior to the hearing. Counsel stated that he had spoken to her approximately two months before the hearing and had informed her of the social worker's recommendation to establish a permanent plan of adoption. Petitioner told him then, that she had documentation that would contradict many of the social worker's reasons for making that recommendation. Petitioner had ample time to provide her attorney with her documents before the hearing date but offered no explanation as to why she had not done so. Thus, the court's finding that petitioner failed to show good cause for a continuance was not arbitrary or capricious. (*In re Karla C., supra*, 113 Cal.App.4th at p. 180.)

### Ineffective Assistance of Counsel.

In a footnote, petitioner invites the court to determine whether counsel should be appointed to determine whether an “inexcusable lapse by trial counsel” deprived her of her right to the effective assistance of counsel. The lapse petitioner refers to pertains solely to the jurisdiction/disposition hearing which was held on January 3, 2003.

It is not clear whether petitioner can still raise an issue of ineffective assistance of counsel in connection with the jurisdiction/disposition hearing by means of a petition for writ of habeas corpus. (See *In re Athena P.* (2002) 103 Cal.App.4th 617, 624, citing *In re S. D.* (2002) 99 Cal.App.4th 1068, 1079-1082 and *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1151-1160.) It is clear that she cannot do so in the context of this petition: a rule 39.1B petition pertains solely to orders setting a hearing pursuant to section 366.26. (§ 366.26, subd. (l); Cal. Rules of Court, rule 39.1B(a)(2).) We therefore decline to appoint counsel for that purpose in connection with the proceeding now before us.

### DISPOSITION

The petition is denied.

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/s/ McKinster

Acting P.J.

We concur:

/s/ Ward

J.

/s/ King

J.